

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Acting City Manager

Date: January 18, 2011

Re: Adopt a Resolution Approving an Agreement between the City of Alameda and the State of California's Department of Boating and Waterways to Recover Costs for Dismantling and Disposing of Abandoned Watercraft

BACKGROUND

On October 1, 2009, the City of Alameda entered into an agreement with Ballena Isle Marina, L.P. (Ballena) to act as agent for the City to dispose and remove non-commercial vessels abandoned within the City's jurisdiction (Exhibit 1). Ballena applied for funding to the State on behalf of the City to participate in the Abandoned Watercraft Program. The funding application was approved pending receipt of a copy of a resolution authorizing Ballena to act as the City's agent.

DISCUSSION

Ballena approached the City requesting that they be allowed to act as the agent for the City to apply for funds from the State of California Department of Boating and Waterways Abatement Fund Program (Program). Ballena currently has four watercraft that have been abandoned at Ballena Marina that they wish to have removed.

The City entered into an agreement authorizing Ballena to act as agent in October 2009. Ballena applied to the State to participate in the Program and was granted funding of \$19,000. The State has not yet funded the Program, but the Department of Boating and Waterways expects it will be approved in the current budget. The State requires that the City enter into a contract (copy on file with the City Clerk) and provide a copy of a resolution authorizing Ballena to act as the City's agent. Once the resolution and contract are transmitted to the State, Ballena will be able to proceed with the removal of four watercraft upon approval of Program funding.

FINANCIAL IMPACT

There is no financial impact to the City resulting from the adoption of this resolution.

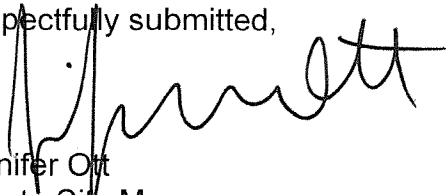
Honorable Mayor and
Members of the City Council

January 18, 2011
Page 2 of 2

RECOMMENDATION

Adopt a resolution approving an agreement between the City of Alameda and the State of California's Department of Boating and Waterways to recover costs for dismantling and disposing of abandoned watercraft.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

By:



Dorene Soto
Division Manager

DES:dc

Exhibits:

1. Standard Agreement – on file in the City Clerk's Office
2. Abandoned Watercraft Abatement Fund Grant Agreement dated October 1, 2009

AWAF GRANT AGREEMENT

THIS AGREEMENT, entered into this 1st day of October, 2009, by and between the CITY OF ALAMEDA, ("CITY"), a municipal corporation, and BALLENA ISLE MARINA, L.P., a California limited partnership whose address is 28441 Highridge Road, Rolling Hills, California 90274, is made with reference to the following:

RECITALS

A. Ballena Isle Marina is a private marina situated on Tidelands granted to the CITY by the State of California by Stats. 1913, Chapter 348, as amended thereafter by Stats. 1917, Chapter 594, and is subject to the provisions and conditions set forth therein;

B. Numerous non-commercial vessels are abandoned in the Tidelands each year, including in the Ballena Isle Marina, causing environmental damage to the waterway and creating hazards for recreational boating and navigation; and

C. The CITY and BALLENA ISLE MARINA, LP desire to enter into an agreement whereby the CITY shall submit an application to the California Department of Boats and Waterways requesting an Abandoned Watercraft Abatement Fund Grant ("AWAF Grant") for the purpose of removing and disposing of non-commercial vessels abandoned within its jurisdiction; in return for which BALLENA ISLE MARINA, LP shall prepare said application and shall carry out the removal and disposal of said vessels, if an AWAF Grant is awarded.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM:

The term of this Agreement shall commence on the 1st day of October 2009 and shall terminate upon the expiration of the AWAF Grant, or, upon the proper removal and disposal of the abandoned vessels for which Grant monies are awarded, whichever occurs later in time.

2. CONDITIONS:

BALLENA ISLE MARINA, LP agrees to prepare and submit the AWAF Grant Application on behalf of the CITY, including all of the required forms and attachments, to the California Department of Boating and Waterways.

BALLENA ISLE MARINA, LP agrees to pay the required amount in matching funds to the CITY for the purposes of complying with the terms of the Grant Application to the State of California Department of Boating and Waterways.

BALLENA ISLE MARINA, LP agrees to remove and dispose of said abandoned vessels subject to the terms and conditions of the AWAF Grant between the State and the CITY, if

awarded and executed, in compliance with the provisions set forth in the Grant Application, including, but not limited to, the following:

- a) Comply with California law regarding titles and liens in conjunction with each vessel, including those provisions set forth in the Harbors and Navigation Code Chapter 3, Article 1 regarding wrecked and salvaged vessels.
- b) Be responsible for securing any studies, permits, or authorizations associated with treatment, removal, storage, disposal, or any other handling of hazardous substances, including, but not limited to, toxic waste, petroleum waste, asbestos, and like substances prior to the removal of any vessel.
- c) Be responsible for the proper and legal disposal or recycling of vessels, parts of any vessels, materials, fluids, petroleum products, and associated chemicals.
- d) Have and maintain adequate insurance in the amounts specified in the Water Hazard Removal List, as set forth in the AWAFF Grant Application, and ensure that all employees, subcontractors, and/or salvage companies hold and maintain the same.

CITY agrees that within 30 days after BALLENA ISLE MARINA, LP's satisfactory removal and disposal of the abandoned vessels, City shall reimburse BALLENA ISE MARINA, LP, for an amount up to its costs of removal and disposal, paid solely from AWAFF Grant monies CITY receives from the state which are applicable to said removal and disposal, subject to BALLENA ISLE MARINA, LP's compliance with the aforementioned terms.

3. **HOLD HARMLESS:**

Ballena Isle Marina, LP shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Ballena Isle Marina, LP's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. Ballena Isle Marina, LP shall further indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies arising from or in any manner connected to Ballena Isle Marina, LP's negligent act or omission regarding performance of services or work conducted or performed pursuant to this Agreement.

If Claims are filed against Indemnitees which allege negligence on behalf of the Ballena Isle Marina, LP, Ballena Isle Marina, LP shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Ballena Isle Marina, LP. However, Ballena Isle Marina, LP shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees. If Claims are filed against Indemnitees which allege negligence on behalf of any person, firm or corporation furnishing or supplying work, services, materials, equipment or supplies to Ballena

Isle Marina, LP for the purpose of performing services or work pursuant to this Agreement, said persons, firms or corporations shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of any one of them. However, said persons, firms or corporations shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

4. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Ballena Isle Marina, LP shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 2D, and 4A, B, C and D. Such certificates, which do not limit Ballena Isle Marina, LP's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, "Attention: Risk Manager." It is agreed that Ballena Isle Marina, LP shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates. Ballena Isle Marina, LP shall insure that any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies to Ballena Isle Marina, LP for the purposes of this Agreement shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement.

In the event that Ballena Isle Marina, LP employs subcontractors, such subcontractors shall be required to furnish proof of workers compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Ballena Isle Marina, LP. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

A. **COVERAGE:**

Ballena Isle Marina, LP shall maintain, in addition to the amounts specified in the Water Hazard Removal List referenced in Section 2(d) herein, the following insurance coverage:

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$500,000
	each occurrence
	\$1,000,000
	aggregate - all other
Property Damage:	\$100,000 each occurrence
	\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown

above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$500,000 each occurrence

Property Damage: \$500,000 each occurrence

or

Combined Single Limit: \$500,000 each occurrence

B. **SUBROGATION WAIVER:**

Ballena Isle Marina, LP agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Ballena Isle Marina, LP shall look solely to its insurance for recovery. Ballena Isle Marina, LP hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Ballena Isle Marina, LP or City with respect to the services of Ballena Isle Marina, LP herein, a waiver of any right to subrogation which any such insurer of said Ballena Isle Marina, LP may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Ballena Isle Marina, LP at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Ballena Isle Marina, LP's name or as an agent of the Ballena Isle Marina, LP and shall be compensated by the Ballena Isle Marina, LP for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Ballena Isle Marina, LP. Ballena Isle Marina, LP is advised to consult Ballena Isle Marina, LP's insurance broker to determine adequate coverage for Ballena Isle Marina, LP.

5. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from BALLENA ISLE MARINA, LP to the CITY shall be addressed to the CITY at:

CITY OF ALAMEDA
950 W. Mall Square, 2nd Flr
Alameda, CA 94501
Attention: Dorene Soto

All notices, demands, requests, or approvals from the CITY to BIM, LP shall be addressed to BIM, LP at:

BALLENA ISLE MARINA, L.P.
28441 Highridge Road
Rolling Hills, CA 90274

6. **CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction.

The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities).

Any suits brought pursuant to this Agreement shall be filed with the Courts of the County of Alameda, the State of California.

7. **WAIVER:**

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

8. **INTEGRATED CONTRACT:**

This agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the CITY and BALLENA ISLE MARINA, LP.

9. CAPTIONS:

The captions in this Agreement are for convenience only, are not part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

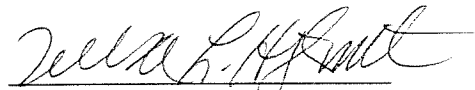
RECOMMENDED FOR APPROVAL:

BALLENA ISLE MARINA, LP

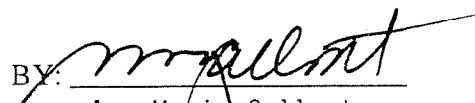

Development Services Director

BY: 

APPROVED AS TO FORM:


City Attorney

CITY OF ALAMEDA,
a municipal corporation

BY: 
Ann Marie Gallant
Interim City Manager



CERTIFICATE OF LIABILITY INSURANCE

OP ID AS
ALMAR-1

DATE (MM/DD/YYYY)

08/21/09

PRODUCER Westmar Insurance Services P.O. Box 208016 Stockton CA 95208-9016 Phone: 800-633-3443 Fax: 209-466-8070		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Almar Management, Inc., et al See Notes 28441 Highridge Road #110 Rolling Hills Estates CA 90274		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A Federal Insurance Company	
		INSURER B	
		INSURER C	
		INSURER D	
		INSURER E	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$1,000,000 P&I GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	79498528	07/10/09	07/10/10	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 10000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 1000000
A X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	79498530	07/10/09	07/10/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
A	EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	79498531	07/10/09	07/10/10	EACH OCCURRENCE \$ 10000000 AGGREGATE \$ 10000000 \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	79595765	07/01/09	07/01/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City of Alameda, it's City Council, boards and commissions, officers, employees and volunteers are named as additional insured in regarding to thework performed by Ballena Isle Marina LP. Above insurance includes Waiver of Subrogation coverage.Per CG 2010 attached.

Notice of cancellation for non payment shall remain 10 days

CERTIFICATE HOLDER

CITYALA

City of Alameda
950 W. Mall Square 2nd Fl
Alameda CA 94501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
RJ Amey

ACORD 25 (2009/01)

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NOTEPAD:

INSURED'S NAME Almar Management, Inc., et al

ALMAR-1

PAGE 2

OP ID AS

DATE 08/21/09

Named Insured/Locations:

Almar Management, Inc., Almar, Ltd., Almar Marinas LLC
28441 High Ridge Road, Suite 110, Rolling Hills Estates, Ca. 90274-4020

Ballena Isle Marina, LP
1150 Ballena Boulevard, Alameda, Ca. 94501-3682

Anacapa Isle Marina, LP
3001 Peninsula Road Oxnard, Ca. 93035-4071

Cabrillo Isle Marina, LP
1450 Harbor Island Drive, San Diego, Ca. 92101-1071

Ventura Isle Marina, LP
1363 Spinnaker Drive, Ventura, Ca. 93001-4341

Treasure Island Enterprises First Street, Clipper Cove, San Francisco, C

INSURED: Ballena Isle Marina

POLICY NUMBER: 795498528 ✓

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS
(FORM B)**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

**Name of Person or Organization: City of Alameda, its City Council, board and commissions,
officers, employees and volunteers**

(If no entry appears above information required to complete this endorsement will be shown in the
Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization
shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or
for you.

Approved as to Form


.....
CITY ATTORNEY

Approved as to Form

City Attorney

CITY OF ALAMEDA RESOLUTION NO. _____

APPROVING AN AGREEMENT BETWEEN THE CITY OF ALAMEDA
AND THE STATE OF CALIFORNIA'S DEPARTMENT OF BOATING
AND WATERWAYS TO RECOVER COSTS FOR DISMANTLING AND
DISPOSING OF ABANDONED WATERCRAFT

WHEREAS, the City of Alameda plans to dismantle and dispose of at least three abandoned watercraft in the City's jurisdiction this year and expects more in the coming years; and

WHEREAS, abandoned watercraft pose a significant danger to other boaters, are a public nuisance and an environmental hazard; and

WHEREAS, the City of Alameda and Ballena Isle Marina, L.P., have entered into an agreement authorizing Ballena Isle Marina to act as the City's agent for the purpose of seeking grant funding to help offset the costs of removing and disposing of abandoned vessels within the City's jurisdiction; and

WHEREAS, Ballena Isle Marina submitted a request for grant funding to the California Department of Boating and Waterways on behalf of the City, which has been approved in the amount of \$19,000, subject to entering into an agreement between both agencies for these funds.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Alameda that the Acting City Manager, or her designee, is hereby authorized to execute an agreement with the State of California's Department of Boating and Waterways for reimbursement of costs associated with the dismantling and disposal of abandoned watercraft within the City's jurisdiction and to take any additional action as may be necessary to carry out the purposes of this resolution.

BE IT FURTHER RESOLVED that the provision of this resolution shall supersede any other resolution in conflict herewith.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 18th day of January, 2011, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 19th day of January, 2011.

Lara Weisiger, City Clerk
City of Alameda